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OFFICE OF PETITIONS

In re : DECISION ON REQUEST
Te Riele, et al. : FOR RECONSIDERATION OF
Application No. 09/884,877 : PATENT TERM ADJUSTMENT
Filed: June 20, 2001 : UNDER 37 C.F.R. §1.705(d)
Patent No. 7,199,280 :
Issued: April 3, 2007 :
:

This letter is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(d)", filed June 4, 2007, requesting correction of the patent term adjustment (PTA) indicated on the patent from zero (0) days to two hundred three (203) days.

The request for reconsideration of the patent term adjustment indicated on the patent is **DISMISSED**.

Applicants are given **two (2) months** from the mail date of this decision to respond to this decision. No extensions of time will be granted under § 1.136.

On April 3, 2007, the above-identified application matured into U.S. Patent No. 7,199,280. The patent issued with a Patent Term Adjustment of zero (0) days (597 days of PTO delay and 608 days of applicant delay).

The Office determined a patent term adjustment of zero (0) days based on PTO delay of forty-two (42) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), twenty (20) days pursuant to 35 U.S.C. 154(b)(1)(A)(iv) and 37 C.F.R. § 1.703(a)(6), and five hundred thirty-five (535) days pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 C.F.R. 1.703(b)(1), reduced by Applicant delay of one hundred seventy-three (173), ninety-two (92), thirty-five (35), one hundred twenty-six (126), ninety (90), and ninety-two (92) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b).

Patentees assert that they should not have been assessed Applicant delay of one hundred seventy-three (173) days for their late response to a July 24, 2001 Notice to File Missing Parts, but rather should have only been assessed delay of one (1) day.

However, Patentee's argument with respect to this instance of Applicant delay is untimely filed. PALM records indicate that the issue fee payment was received in the Office on November 14, 2006. No filing of an application for patent term adjustment preceded the payment of the issue fee. The period for filing an application for patent term adjustment requesting reconsideration of the initial determination of patent term adjustment at the time of mailing of the notice of allowance ended November 14, 2006. Accordingly, it is appropriate to dismiss this argument as untimely filed.

Patentees also argue that the delay pursuant to 37 C.F.R. § 1.703(b)(1) should have been five hundred seventy-seven (577) days, not five hundred thirty-five (535) days. A review of the record indicates that the application was filed on June 20, 2001, and did not issue until April 3, 2007. Accordingly, there was a PTO delay of one thousand seventeen (1017) days in excess of three years. However, Applicants filed an RCE on January 18, 2006. Accordingly, under 37 C.F.R. § 1.703(b)(1), the number of days between January 18, 2006 to April 3, 2007, or four hundred forty (440) days, shall not be counted in determining the delay in excess of three years. In view thereof, PTO delay was five hundred seventy-seven (577) days. However, as the 577 days overlap with the 62 days of PTO delay already accorded (42+20¹), this delay does not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A),

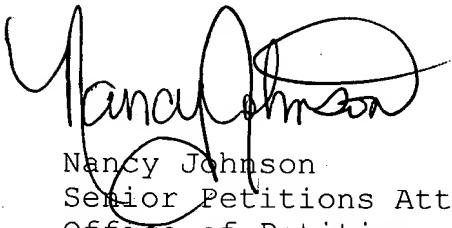
¹ It is noted that a period of 535 days, which only considers the overlap of 42 days, was entered before the entry of the 20 days of adjustment. The 535 days has been corrected to 515 days considering the additional 20 days of overlap.

and 37 C.F.R. § 1.703(f). See also Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004). Accordingly, the proper PTO delay due to the Office's failure to issue the patent within three years is five hundred fifteen (515) days.

In view thereof, the correct determination of PTA at the time of issuance is zero (0) days (577 (515+42+20) days of PTO delay, reduced by 608 days of applicant delay).

Receipt of the \$200 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.



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